

ARKANSAS WESTERN GAS COMPANY

IBLA 76-628

Decided October 6, 1976

Appeal from a decision of the Eastern States Office, Bureau of Land Management, rejecting noncompetitive acquired lands oil and gas offer ES 15503 (Arkansas).

Set aside and remanded.

1. Applications and Entries: Generally -- Mineral Leasing Act for Acquired Lands: Generally -- Oil and Gas Leases: Acquired Lands Leases -- Oil and Gas Leases: Applications: Generally -- Oil and Gas Leases: Future and Fractional Interest Leases

An acquired lands oil and gas lease offer, for lands in which the United States owns only a fractional mineral interest, is defective and is properly rejected when the applicant fails to accompany its offer with the statement required by the regulation showing the extent of its ownership of operating rights to the fractional mineral interest not owned by the United States. Under the regular or "over-the-counter" filing procedure, however, if the offeror submits its statement of operating rights with its appeal, the defect may be considered cured with priority of filing as of that time.

APPEARANCES: Dwight H. Ford, Land Manager of Arkansas Western Gas Company, for appellant.

OPINION BY ADMINISTRATIVE JUDGE THOMPSON

Arkansas Western Gas Company has appealed from the May 3, 1976, decision of the Eastern States Office, Bureau of Land Management, which rejected its noncompetitive acquired lands oil and gas lease offer ES 15503 (Arkansas).

Appellant filed Form 3110-3 offering to lease the United States' 50 percent mineral interest in the NW 1/4 NW 1/4 of Sec. 5, T. 11 N., R. 28 W., 5th P.M., Franklin County, Arkansas, pursuant and subject to the Act of August 7, 1947, 30 U.S.C. §§ 351-359 (1970), and all reasonable regulations of the Secretary of the Interior. The offer was rejected because the statement required by 43 CFR 3130.4-4, showing the extent of its ownership rights to the fractional mineral interest not owned by the United States, had not been filed accompanying the offer.

Appellant, in its appeal, asserts that it holds no interest on any of the undivided 50 percent mineral interest underlying the lands not owned by the Federal Government.

[1] The pertinent regulation concerning fractional present interests requires that:

An offer for a fractional present interest noncompetitive lease must be executed on a form approved by the Director and it must be accompanied by a statement showing the extent of the offeror's ownership of the operating rights to the fractional mineral interest not owned by the United States in each tract covered by the offer to lease. Ordinarily, the issuance of a lease to one who, upon such issuance, would own less than 50 percent of the operating rights in any such tract, will not be regarded as in the public interest, and an offer leading to such results will be rejected. [Emphasis added.]

43 CFR 3130.4-4.

The Department has consistently ruled that the failure to submit such a statement mandates the rejection of the offer. Beatrice E. Marchand, 26 IBLA 180 (1976); Mary Nan Spear, 25 IBLA 34 (1976); Robert L. Williams, 24 IBLA 311 (1976); Michael Shearn, 24 IBLA 259 (1976); James E. Belden, 23 IBLA 216 (1976); Margaret Hughey Hugus, 22 IBLA 146 (1975); George H. Isbell, Jr., 20 IBLA 312 (1975); James H. Scott, 18 IBLA 55 (1974); Michigan Wisconsin Pipe Line Co., 17 IBLA 282 (1974); Arthur E. Meinhart, 11 IBLA 139, 80 I.D. 395 (1973). The requirement applies to both simultaneous and over-the-counter filings. Arthur E. Meinhart, *supra*. However, under the regular or "over-the-counter" filing procedure, if the offeror submits the required statement before the rejection decision becomes final, subject to any intervening offers, the offer may be given priority from the date the defect is cured. James H. Scott, *supra*; R. C. Bailey, 7 IBLA 266 (1972); Bear Creek Corp., 5 IBLA 202 (1972); William B. Collins, 4 IBLA 8 (1971); *see* Irwin Rubenstein, 3 IBLA 250, 254 (1971).

Appellant's offer, as filed, was subject to rejection for failure to include the statement required by 43 CFR 3130.4-4. However, because appellant filed its statement of ownership to the fractional mineral interest not owned by the United States on May 28, 1976, in its appeal, the offer may be given priority as of that date, and adjudicated further.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is set aside and the case is remanded for further consideration.

Joan B. Thompson
Administrative Judge

We concur:

Douglas E. Henriques
Administrative Judge

Newton Frishberg
Chief Administrative Judge

